

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE: PEARLAND SUNRISE LAKE § CASE NO. 10-11926-HCM
VILLAGE I, LP §
DEBTOR § CHAPTER 11

MOTION OF THE UNITED STATES TRUSTEE
TO DISMISS CASE OR, IN THE ALTERNATIVE,
TO CONVERT CASE TO A CASE UNDER CHAPTER 7

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

THE MOVANT EXPRESSLY CONSENTS TO A CONTINUANCE FOR THE REQUIREMENT OF 11 U.S.C. § 1112(b)(3) THAT THE HEARING BE COMMENCED WITHIN 30 DAYS AFTER THE FILING OF THIS MOTION.

TO THE HONORABLE CHRISTOPHER H. MOTT, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, JUDY A. ROBBINS, THE UNITED STATES TRUSTEE for Region 7 ("UST") through the undersigned counsel and files this Motion to Dismiss, or in the Alternative to Convert Case to a Case Under Chapter 7 pursuant to 11 U.S.C. § 1112(b)(1), (2), and (3) and Local Bankruptcy Rule 2015(b) and respectfully represents as follows:

1. The Court has jurisdiction of this matter under 28 U.S.C. § 134(a) and (b), 28 U.S.C. § 157(a) and (b)(1), 28 U.S.C. § 151, and 11 U.S.C. § 1112(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B).

2. Pearland Sunrise Lake Village I, LP ("Debtor") filed a voluntary petition under Chapter 11 of Title 11, United States Code on July 9, 2010.

3. Cause exists to dismiss or convert this case pursuant to 11 U.S.C. § 1112(b)(4)(A). Because Debtor has not filed complete and accurate monthly operating reports (“MORs”) on a regular basis, the Court, the United States Trustee, and the creditors are unable to determine if Debtor has a reasonable likelihood of rehabilitation or if there has been a continuing loss to or diminution of the estate. Without operating reports, the Court, the U.S. Trustee, and creditors do not know whether Debtor is paying its post petition obligations as they come due or whether Debtor is accruing administrative expenses. Either of these obligations decreases the possible recovery for unsecured creditors. Furthermore, the Court, the U.S. Trustee, and creditors cannot know whether Debtor is generating positive cash flow such that it will be able to fund a plan out of future earnings. Although Debtor filed a Plan and Disclosure Statement in this case and a hearing is currently set for July 25, 2011, the stay is lifted and reorganization does not appear necessary.

4. Failure to file current accurate MORs is also cause for conversion or dismissal of a case pursuant to 11 U.S.C. § 1112(b)(4)(F) and Local Rule 2015(b). Pursuant to Bankruptcy Code Section 704(8) (made applicable to cases filed under Chapter 11 by sections 1107(a) and 1106(a)(1), Fed. R. Bankr. P. 2015, and Local Rule 2015(b)), Debtor is required to file monthly operating reports with the Court no later than the twentieth day following the end of each calendar month. Debtor has not filed the MORs for the month of May 2011 and June 2011 will be due no later than July 20, 2011. Without these reports parties cannot ascertain the status of Debtor’s efforts toward reorganization or Debtor’s ability to reorganize.

5. Cause exists to convert or dismiss a case pursuant to 11 U.S.C. § 1112(b)(4)(K) for failure to pay any fees required under Chapter 123 of Title 28, United States Code. Debtor has failed to pay UST quarterly fees for the second quarter of 2011 and fees are incurred for the

third quarter of 2011. The UST cannot determine Debtor's actual disbursements without the MORs, but fees have been running \$975 per quarter. The UST asserts Debtor has incurred quarterly fees for the second quarter in the amount of \$975 and for the third quarter in the amount of \$975 and will continue to incur quarterly fees until such time as the case is closed by the court, converted, or dismissed.

6. On March 2, 2011, an Agreed Granting Relief was entered and the secured creditor has the right to post all the real property owned by Debtor for foreclosure. With that agreement, reorganization appears unnecessary and the only remaining dispute appears to be the distribution of insurance proceeds as described in the paragraph below.

7. Debtor is a party in a pending adversary, number 10-01145, brought to determine disbursement of insurance proceeds now held in the registry of the Court. This matter is pending in the bankruptcy case of a related entity, Pearland Sunrise Lake Center LP, and has been pending since October 27, 2010. On March 2, 2011, the Court entered an order which appears to finally bring all funds into the registry of this Court and provides for disbursement of some portion of the funds to certain claimants. On information and belief, the distribution of these proceeds to creditors of each of the bankruptcy entities is the only remaining matter in controversy in these matters. It doesn't appear that reorganization is required to achieve this. With respect to the pending adversary, the UST would ask the Court to retain jurisdiction over that matter after dismissal of the associated bankruptcy case. Debtor will remain a party to this adversary.

8. For cause set forth above and because Debtor has failed to accept the basic responsibilities of a Chapter 11 debtor-in-possession, the Court, the U.S. Trustee, and the

creditors have no basis by which to monitor Debtor's operations, this case should be dismissed or converted to Chapter 7 pursuant to 11 U.S.C. § 1112(b) and Local Rule 2015(b).

9. In the event of dismissal, the UST requests that the Order provide for payment of any quarterly fees owed to the UST and any noticing fees owed to the Clerk of the Bankruptcy Court at the time of dismissal of the case pursuant to 28 U.S.C. § 1930.

WHEREFORE, premises considered, the United States Trustee prays that the Court dismiss this case or, in the alternative, convert this case to a case under Chapter 7 for cause. The UST prays for any and all further relief as is equitable and just.

Respectfully submitted,

JUDY A. ROBBINS
UNITED STATES TRUSTEE
REGION 7

By: /s/ Deborah A. Bynum
Deborah A. Bynum
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CERTIFICATE OF SERVICE

I hereby certify that I forwarded a true and correct copy of the foregoing United States Trustee's Motion to Dismiss, or in the Alternative to Convert Case to a Case Under Chapter 7 by prepaid first class mail and/or by electronic means for all Pacer system participants to the parties listed on Debtor's Mailing Matrix on this the 14th day of July, 2011.

/s/ Deborah A. Bynum
Deborah A. Bynum

Label Matrix for local noticing

0542-1

Case 10-11925-hcm

Western District of Texas

Austin

Wed Jul 6 08:47:18 CDT 2011

AT&T

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Pearland Sunrise Lake Village II, LP

10516 FM 1431 East

Marble Falls, TX 78654-3387

U.S. BANKRUPTCY COURT

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10511 Windsor Lane, Suite B109

Houston, TX 77031-3709

City National Bank

c/o Michael J Durrschmidt

700 Louisiana, Suite 2550

Houston, Texas 77002-2756

City of Pearland

Linebarger Goggan Blair & Sampson LLP

c/o John P. Dillman

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City of Pearland

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Pasadena, CA 91101-2508

Cross Check Public Adjusters, Inc.

c/o Michael Y. McCormick

1900 West Loop South, #1800

Houston, TX 77027-3263

CrossCheck

Attention: Gary Baca

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(p)INTERNAL REVENUE SERVICE

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Trustee of John R. Carlew Living Trust

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Marble Falls, TX 78654-3387

John Wesley Wauson

Wauson - Probus

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Meador Staffing

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Mythilis World, Inc.

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OmniBank, N.A.
c/o Storey & Denum, P.C.
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Houston, Texas 77079-1762

Oxford Development
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Oxford Development Corp
c/o Charles Long
1177 W. Loop South Ste 1300
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Spector & Johnson, PLLC
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Pearland, TX 77581-5773

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Austin, TX 78731-3186

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

IRS
Special Procedures Staff
300 E 8th Street
Stop 5022 AUS
Austin, TX 78701

End of Label Matrix	
Mailable recipients	49
Bypassed recipients	0
Total	49